

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 29,00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lancer Orthodontics, Inc.

Serial No. 75/011,796

Stephen J. Strauss of Fulwider, Patton, Lee & Utecht for
Lancer Orthodontics, Inc.

Cynthia Tripi, Trademark Examining Attorney, Law Office 105
(Thomas Howell, Managing Attorney).

Before Simms, Walters and Rogers, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Lancer Orthodontics, Inc. (applicant), a California
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark TITANAL
for pre-formed arches for orthodontic use.¹ The Examining
Attorney has refused registration under Section 2(d) of the
Act, 15 USC § 1052(d), on the basis of the mark

¹ Application Serial No. 75/011,796, filed October 30, 1995,
based upon allegations of use and use in commerce since at least
as early as 1984.

FORESTADENT-TITANOL for the following goods: "metal alloy and plastic wire and pins for jaw orthopedics and orthodontia, sets of dental caps and crowns with metal or plastic superstructures, non-metallic pins for roots of teeth, pins for anchoring teeth."² Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

We reverse.

The Examining Attorney argues that the marks and the respective goods are similar and that confusion is likely. More particularly, the Examining Attorney maintains that consumers will perceive the first portion of registrant's mark (FORESTADENT) as a house mark³ and will use the term TITANOL to call for the goods. With respect to the second portion of registrant's mark, the Examining Attorney argues that TITANOL and applicant's mark, TITANAL, are phonetically equivalent and that slight differences in the sound and appearance of the marks will not avoid a likelihood of confusion. With respect to applicant's

² Registration No. 1,435,408, issued April 7, 1987, under Section 44 of the Trademark Act. A combined Sections 8 and 15 affidavit has been filed.

³ In the registration, however, the registrant is identified as "Bernhard Forster GmbH," not "Forestadent."

argument, set forth more fully below, that Food and Drug Administration (FDA) labeling requirements mandate the use of the respective corporate names and addresses of the applicant and the registrant, the Examining Attorney argues that the marks appearing on the drawing page of the application and on the registration must be compared.

Concerning the goods, the Examining Attorney argues that these goods may be used together by dentists and travel in the same channels of trade. Even though purchasers may be sophisticated and knowledgeable in a particular field, the Examining Attorney maintains, those purchasers may not be immune to confusion. The Examining Attorney concludes that, given the closely related nature of the goods and the similarity of the marks, consumers familiar with the mark in the cited registration would believe that applicant's goods sold under applicant's mark emanate from registrant, especially considering that the marks may not be viewed side-by-side.

Applicant, on the other hand, argues that the first word of the registered mark is equally, if not more, distinctive and dominant than the second word. Applicant's attorney also argues, without support, that the second word in the registered mark (as well as applicant's own mark) is derived from the word "titanium," the metal alloy used in

orthodontic wire and pins. As such, this part of the registered mark is suggestive and less distinctive, according to applicant. Applicant argues, therefore, that the marks, when viewed in their entirety, including the clearly different first word of the registered mark, are different in sight, sound and meaning. Concerning the goods, applicant argues that its goods are unrelated to the goods identified in the cited registration. Also, applicant maintains that the goods of applicant and registrant travel in different channels of trade (by product catalog and through sales personnel of each entity) to sophisticated purchasers such as medical professionals and orthodontists, who would be expected to exercise a great degree of care in their purchasing decisions. Applicant also notes that the FDA requires all medical-device companies to clearly and prominently place their names and addresses on all package labels of the medical devices which they manufacture and sell. See 21 CFR § 801.1. Finally, in a footnote in its brief, applicant's attorney indicates that there has been no actual confusion despite over ten years' use of the respective marks.

We agree with applicant that there are sufficient differences between the marks such that the relatively sophisticated purchasers of the respective goods (dentists

and orthodontists) would not be likely to confuse the source of the products. The different and prominent first word in registrant's mark is significant in our opinion and, while the respective goods are very similar, the care necessarily exercised by the purchasers of these goods will tend to avoid any likelihood of confusion.⁴

Decision: The refusal of registration is reversed.

R. L. Simms

C. E. Walters

G. F. Rogers
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

⁴ Because applicant is not seeking to register its mark with any trade name, applicant's argument that we should consider the trade names of registrant and applicant is without merit. See *National Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, 1216 (TTAB 1990), *In re Rexel Inc.*, 223 USPQ 830, 832 (TTAB 1984) and cases cited therein.